

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

WAGNER OIL COMPANY,
Plaintiff,

vs.

**FEDERAL INSURANCE COMPANY;
PACIFIC INDEMNITY COMPANY; and
SCOTTSDALE INSURANCE COMPANY,**
Defendants.

§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. _____

**DEFENDANT FEDERAL INSURANCE COMPANY'S
NOTICE OF REMOVAL**

Defendant Federal Insurance Company ("Federal") files this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 as follows:

I. THE PARTIES

1. Plaintiff Wagner Oil Company ("Wagner") is a Texas corporation with its principal place of business in Fort Worth, Texas.

2. Defendant Federal Insurance Company is an Indiana corporation with its principal place of business in New Jersey.

3. Defendant Pacific Indemnity Company is a Wisconsin corporation with its principal place of business in New Jersey.

4. Defendant Scottsdale Insurance Company is an Ohio corporation with its principal place of business in Arizona.

II. THE ACTION

5. This is a liability insurance coverage dispute involving several underlying actions filed in Louisiana state courts (collectively the "Louisiana Lawsuits").

6. Wagner filed its petition against Federal and others in state court in Tarrant County, Texas, 236th Judicial District Court, on or about December 10, 2018 (the “State Court Action”).

7. In the State Court Action, Wagner alleges that: (a) Federal, Pacific and Scottsdale insured it under various general liability, pollution liability and/or umbrella/excess liability insurance policies; (b) property damage allegations were asserted against Wagner in the Louisiana Lawsuits; (c) although Wagner properly tendered notice of the Louisiana Lawsuits, Federal, Pacific and/or Scottsdale have not provided full policy benefits for the Louisiana Lawsuits; and (d) Wagner Oil has incurred over \$1,000,000.00 in uncompensated attorneys’ fees and costs in connection with the Louisiana Lawsuits.

8. In the State Court Action, Wagner asserts claims against Federal, Pacific and Scottsdale for declaratory judgment, breach of contract, and attorneys’ fees.

III. REMOVAL IS PROPER

9. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and is one which may be removed to this Court pursuant to 28 U.S.C. § 1441 because it is an action between citizens of different states wherein the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

10. Removal is proper under 28 U.S.C. § 1332(a) because there is currently completely diversity of citizenship and complete diversity existed on the date the State Court Action was filed.

11. Further, the amount in controversy requirement is satisfied because Wagner alleges it seeks monetary relief of \$1,000,000 or more.

12. Although Federal disputes liability and damages, it is evident from Wagner's state court petition that it purports to allege monetary relief that, if granted, would exceed \$75,000. Therefore, the amount in controversy exceeds the \$75,000 threshold required to invoke this Court's jurisdiction.

13. Under federal law, "notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based..." 28 U.S.C. § 1446(b)(1).

14. Here, removal is timely. Federal filed this Notice of Removal within the thirty-day time period required by 28 U.S.C. § 1446(b)(1).

15. Venue is proper in the United States District Court for the Northern District of Texas under 28 U.S.C. § 124(a) and 28 U.S.C. § 1446(a) because it is the district and division within which the State Court Action is pending.

16. Pursuant to 28 U.S.C. § 1446(a), attached hereto is:

| State Court Pleadings | | |
|-----------------------|-------------------------------|---------------------------|
| Exhibit | Description | Date Filed in State Court |
| A | Docket Sheet from State Court | N/A |
| B | Plaintiff's Original Petition | 12/10/2018 |
| C | Service Request Form | 01/22/2019 |

17. Pursuant to 28 U.S.C. § 1446(d), promptly after Federal files this Notice of Removal, written notice of the filing will be given to Wagner, the adverse party.

18. Pursuant to 28 U.S.C. § 1446(d), promptly after Federal files this Notice of Removal, a Notice of Filing Notice of Removal will be filed with the Clerk of the Tarrant County District Court of Texas.

19. Pursuant to Local Rule 81, Defendant Federal is simultaneously filing a

completed civil cover sheet and a supplemental civil cover sheet.

20. Consent by all Defendants is not required because, upon information and belief, all Defendants have not been “properly joined and served.” 28 U.S.C. § 1446(b)(2)(A).

21. Federal does not waive and specifically reserves any and all objections, exceptions, or defenses to Wagner’s Original Petition in the State Court Action, including but not limited to moving to have this matter dismissed.

WHEREFORE, PREMISES CONSIDERED, Defendant Federal Insurance Company respectfully requests that the above-entitled action be removed from the 236nd Judicial District Court of Tarrant County, Texas to the United States District Court for the Northern District of Texas, Fort Worth Division.

Respectfully submitted,

**MARTIN, DISIERE, JEFFERSON
& WISDOM, LLP**

By: /s/ Kevin L. Sewell
Kevin L. Sewell
Lead Counsel
Texas Bar No. 00789619
Matthew S. Paradowski
Texas Bar No. 24027588
9111 Cypress Waters Blvd., Suite 250
Dallas, Texas 75019
Telephone: (214) 420-5500
Facsimile: (214) 420-5501
Email: sewell@mdjwlaw.com
Email: paradowski@mdjwlaw.com

**ATTORNEYS FOR PLAINTIFF/
COUNTER-DEFENDANT FEDERAL
INSURANCE COMPANY**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been mailed, telecopied or hand delivered to all attorneys of record, in compliance with the FEDERAL RULES OF CIVIL PROCEDURE on this the 23rd day of January, 2019.

/s/ Kevin L. Sewell

KEVIN SEWELL